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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,386	07/17/2003	James G. Prather	MW014	4705

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EXAMINER

SWENSON, BRIAN L

ART UNIT PAPER NUMBER

3618

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/622,386

Applicant(s)

PRATHER ET AL.

Examiner

Brian Swenson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Acknowledgment is made of the amendment filed on 27 June 2005 where:
  - a. The abstract has been amended;
  - b. Formal drawings have been received;
  - c. The specification has been amended; and
  - d. Claims 1 and 3 have been amended.

***Claim Objections***

2. Claim 23 objected to because of the following informalities: The claim ends in a comma. The comma should be replaced with a period. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-14 and 22-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1 and 23, as amended, claims: "a gate member pivotably attached to a portion of said base".

Applicant defines the base as element (110; see page 3, paragraph [0011] of the instant specification) and states (page 7, paragraph [0019] of the instant specification), "that the rear gate G of the basket B is pivotally mounted on the first horizontal transverse member 162". Figure 1, shows the member 162 is not part of the base assembly 110. The claims have been examined with a gate to be pivotally attached at a rear upper end, as best understood from the instant drawings and specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11, 15-21 and 23 are replete with functional and indefinite language and are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11 and 15 recite the limitation, "**conventional**" **shopping carts**. The limitation, "**conventional**" **shopping carts** is not of proper scope as, "**conventional**" **shopping carts** have not been positively recited leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the "conventional shopping cart". Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known in the art; the use of quotes typically indicate an *ad hoc* or limited definition, which as confusion and is unclear what "conventional" refers to in this case. If two carts have similar wheels are they considered "conventional"?

There is insufficient antecedent basis for these limitations in the claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-14, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,507,507 issued to Davidson.

Davidson, teaches in Figures 1-9 and respective portions of the specification of a: shopping cart (10) including: a wheeled base (rails 22,24 and casters 14), a container (18B) supported by the base, a gate (58) pivotably supported (see Figure 5) on a horizontal support rod located at the rear of the container, a pedestal (36) formed on the base for supporting a container thereon, the pedestal being secured to the base at a location between the forward and rearward ends of the base, the container being supported on the rear of the table portion pedestal so that the rear of the container is disposed forwardly of the rear of the base: see Figure 2 where the pedestal is shown with a slight inclination where the front of the pedestal is placed higher than the rear, a handle member (66) located a substantial distance upward from a basket (18b) that is part of the container, two rods (26) connecting to a forward attachment of the handle and to the pedestal and two rods (32) for connecting a rearward attachment of the handle to the base. Davidson, teaches of two hinge rods (62) for pivoting of a rear gate; Figure 5. Davidson teaches in Figure 6 of a child seat that can be attached to the rear

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of the basket and shows in Figure 5 the child seat can be pivoted to a nonfunctional position.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15-21 and 23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson.

Davidson discloses the claimed invention, as disclosed above except for specifically stating if the space between the pedestal and base has been minimized to effectively eliminate the storage of merchandise. Davidson shows, in Figure 1 and 2 that the space is minimized to the extent that medium to large items cannot be stored in the space. It would have been obvious to one having ordinary skill in the art at the time of invention to reduce the size to effectively eliminate the storage of merchandise to allow large merchandise to be stored in the space between the upper containers.

Davidson as disclosed above discloses the claimed invention including teaching of a pair of horizontal rods (62) separated vertically, but does not teach of the rods connected to the spine (26). Davidson shows in Figure 2 the upper rod (62) lies nearly in substantially the same plane as the handle and forms a pivot connection for the rear gate; Figure 5. It would have been obvious to one having ordinary skill in the art at the

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time of invention to connect the pair of horizontal rods to the spine, one would be motivated to connect the rods to the spline to increase the strength and robustness of the cart.

### ***Response to Arguments***

Applicant's arguments filed 27 June 2005 have been fully considered but they are not persuasive in regard to the 35 U.S.C. 112, second paragraph rejection in regards to claims 11 and 15-21. Specifically,

The limitation, ***“conventional” shopping carts*** is not of proper scope as a, ***“conventional” shopping carts*** has not been positively recited leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the “conventional shopping cart”. Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known, the use of quotes typically indicate an *ad hoc* or limited definition. There is no structure recited in the claim language to indicate as to what constitutes a: ***“conventional” shopping cart***. If two carts have similar wheels are they considered “conventional”?

In response to applicant's argument that the specification defines a ***“conventional” shopping cart***, it is noted that these features are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments that the USPTO has issued 201,163 patents with the word "conventional" within the claimed language. This argument is not germane to the instant application.

Applicant's arguments, with respect to the rejection(s) of claim(s) 1-22 under 35 USC 102 and 103 have been fully considered and but are moot in view of the new ground(s) of rejection, detailed above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.



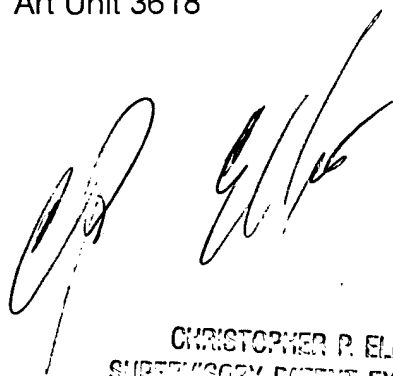
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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bls

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Examiner  
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